

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Wassim Abedrabbo	Team: Squad #12	CCRB Case #: 201608013	<input type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Sunday, 09/18/2016 7:00 AM	Location of Incident: § 87(2)(b)	Precinct: 23	18 Mo. SOL 3/18/2018	EO SOL 3/18/2018	
Date/Time CV Reported Sun, 09/18/2016 8:38 AM	CV Reported At: CCRB	How CV Reported: Call Processing System	Date/Time Received at CCRB Sun, 09/18/2016 8:38 AM		

Complainant/Victim	Type	Home Address
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)

Subject Officer(s)	Shield	TaxID	Command
1. An officer			WARRSEC
2. DT3 Corey Gresko	1660	932745	WARRSEC
3. SGT Damion Brown	03928	945533	WARRSEC
4. DT3 Christian Martinez	7412	944774	WARRSEC

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. DT3 Matthew Murphy	03752	930804	DBMS
2. SGT Brian Farrell	01056	925260	WARRSEC

Officer(s)	Allegation	Investigator Recommendation
A.SGT Damion Brown	Abuse: Sergeant Damion Brown damaged § 87(2)(b)'s property.	§ 87(2)(b)
B.SGT Damion Brown	Abuse: Sergeant Damion Brown entered and searched § 87(2)(b) in Manhattan.	§ 87(2)(b)
C.DT3 Christian Martinez	Abuse: Detective Christian Martinez drew his gun.	§ 87(2)(b)
D.DT3 Christian Martinez	Abuse: Detective Christian Martinez interfered with § 87(2)(b)'s use of a recording device.	§ 87(2)(b)
E.SGT Damion Brown	Abuse: Sergeant Damion Brown detained § 87(2)(b)	§ 87(2)(b)
F.SGT Damion Brown	Abuse: Sergeant Damion Brown detained § 87(2)(b)	§ 87(2)(b)
G.SGT Damion Brown	Abuse: Sergeant Damion Brown detained § 87(2)(b)	§ 87(2)(b)
H. An officer	Abuse: An officer interfered with § 87(2)(b)'s use of a recording device.	§ 87(2)(b)
I.DT3 Corey Gresko	Discourtesy: Detective Corey Gresko spoke discourteously to § 87(2)(b) and § 87(2)(b)	§ 87(2)(b)

Case Summary

On September 18, 2016, § 87(2)(b) filed this complaint with the CCRB on behalf of herself, her son § 87(2)(b) and her daughter § 87(2)(b).

On September 18, 2016, at approximately 7:00 a.m., Sergeant Damien Brown and Detective Christian Martinez, both of the Manhattan Warrant Section, went to § 87(2)(b) in Manhattan with arrest warrant number § 87(2)(b) (Board Review 01). When § 87(2)(b) responded to the knock on the door, Detective Christian Martinez informed her that he and his team were officers, that they had a warrant, and that they “needed” to gain access into the apartment to look for the subject of the aforementioned warrant, § 87(2)(b). After an exchange, § 87(2)(b) informed the officers that she was not going to open the door because the individual named on the warrant was not at the location and he does not reside at the location.

After, § 87(2)(b) instructed her son § 87(2)(b) and her daughter § 87(2)(b) to go into her bedroom and sit on her bed.

Then, an officer unsuccessfully attempted to open the door by kicking it. Approximately six to seven minutes after, Sergeant Brian Farrell, under the instruction of Sgt. Brown, broke the door open with a ram and the officers entered the apartment (**Allegation A and Allegation B**).

When the officers entered the apartment, § 87(2)(b) stood away from the door with an iPad in her hands as she was attempting to record the interaction. Det. Martinez allegedly had his gun unholstered and placed flat against his chest (**Allegation C**). Det. Martinez immediately walked up to § 87(2)(b) allegedly took her iPad out of her hand, and he put onto a computer desk (**Allegation D**).

The officers then began to search the location for the individual (**Allegation B continued**). § 87(2)(b) began to record the interaction on her phone, and as she was doing so an officer allegedly flashed a light into her phone to prevent her from recording (**Allegation E**). During the search, multiple requests were made for § 87(2)(b) and § 87(2)(b)'s identifications (**Allegation F, G, and H**). He was provided § 87(2)(b)'s identification, but § 87(2)(b) told him he did not need § 87(2)(b)'s identification because she is a minor. Det. Gresko then allegedly made a discourteous statement regarding § 87(2)(b) and § 87(2)(b) being “in” the same bed (**Allegation G**).

The officers completed their search for the individual and left the location. The officers were at the location for approximately 15 to 20 minutes.

This case went passed the 90-day benchmark due to difficulties in officer identification and delays in officer scheduling.

Video footage was obtained in relation to this case.

No arrests were made or summonses issued as a result of this incident.

§ 87(2)(g)



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Mediation, Civil and Criminal Histories

- § 87(2)(b) declined to mediate this complaint.
- As of March 13, 2016, § 87(2)(b) has not filed a Notice of Claim with NYC Comptroller’s Office (Board Review 02).
- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

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Civilian and Officer CCRB Histories

- This is the first CCRB complaint filed by or on behalf of [§ 87(2)(b)] (Board Review 06).
- This is the first CCRB Complaint filed by or on behalf of [§ 87(2)(b)] (Board Review 07).
- This is the first CCRB Complaint filed by or on behalf of [§ 87(2)(b)] (Board Review 08).
- This is the fifth CCRB complaint filed against Sergeant Damion Brown, who has a total of nine allegations in his CCRB history and who has been a member of service for nine years (see officer history). The sole allegation against Sgt. Brown that was fully investigated was unsubstantiated, [§ 87(2)(g)]
- This is the 12th CCRB complaint filed against Detective Christian Martinez, who has a total of 21 allegations in his CCRB history and who has been a member of service for nine years (see officer history). Of the 21 allegations made against Det. Martinez, five were fully investigated. None of the allegations fully investigated were substantiated, [§ 87(2)(g)]
- This is the eighth CCRB complaint filed against Detective Corey Gresko, who has a total of 18 allegations in his CCRB history and who has been a member of service for 13 years (see officer history). Of the 18 allegations made against Det. Gresko, 14 were fully investigated. None of the allegations fully investigated were substantiated; however, one discourtesy allegation was unsubstantiated.

Findings and Recommendations

Explanation of Subject Officer Identification

- [§ 87(2)(b)] alleged that upon the officers entering into [§ 87(2)(b)], an officer entered with his gun drawn and placed flat on his chest. That same officer then interfered with her ability to record moments after (Board Review 09). [§ 87(2)(b)] identified the officer as one of the individuals who were at her door at the start of the interaction (see below). Additionally, she provided the description of a Hispanic male, who was in his 30s, who was approximately 5’7-5’9”, and who was approximately 160 to 190 lbs. It is undisputed that Detective Christian Martinez was one of two officers who arrived at the location first and he spoke to [§ 87(2)(b)] through the door. Det. Martinez is a Hispanic male, who was [§ 87(2)(b)] old, 5’8”, and weighed 200 lbs. at the time of his CCRB interview (Board Review 10). [§ 87(2)(g)]
- [§ 87(2)(b)] alleged that while she was recording the interaction with her cellphone, a white male officer flashed his light into the camera and he said, “I’m not trying to put my face in the camera” (Board Review 11). All three civilians present during the incident provided different physical descriptions of the officer against whom they alleged the action. [§ 87(2)(b)] provided the description of a heavy set white male who was approximately 200 pounds, and was approximately 6’0” tall. None of the officers interviewed for this case acknowledged interfering with [§ 87(2)(b)]’s ability to record and

this interaction was not caught on camera. § 87(2)(g)

Allegation A - Abuse: Sergeant Damion Brown damaged § 87(2)(b)'s property.

Allegation B – Abuse: Sergeant Damion Brown entered and searched § 87(2)(b) in Manhattan.

It is undisputed that Manhattan Warrant Squad officers entered and searched § 87(2)(b) in Manhattan, under the instruction of Sergeant Damion Brown. It is undisputed that a ram was used by the officers to gain entry into the apartment, breaking the lock of the door and denting the door in multiple locations (Board Review 12). Additionally it is undisputed that the Manhattan Warrant Squad officers entered and searched the apartment for § 87(2)(b). Finally, it is undisputed that the subject of the search was not in the apartment.

During her CCRB statement, § 87(2)(b) stated that between February of 2015 and the incident date, NYPD officers went to her apartment looking for an individual by the name of “§ 87(2)(b)” approximately four or five times.

On September 18, 2016, at approximately 7:00 a.m., § 87(2)(b) heard a knock on the door of her apartment at the above mentioned location. After she approached the door and she was informed that NYPD police officers behind the door, she asked what they needed. Detective Christian Martinez told § 87(2)(b) that she needed to open the door because the officers needed access to the apartment because they had a warrant. § 87(2)(b) asked the officers why they needed access into the apartment and who the officers were looking for. She was instructed to open the door once again. § 87(2)(b) requested that the officers present the warrant in front of the peephole of the door or that they slide the warrant under the door, but they refused to do so. § 87(2)(b) continued to refuse the officers access into the apartment, as she informed the officers that other officers have gone to her home multiple times and the person that she assumed they were looking for § 87(2)(b) did not reside at her apartment. Sgt. Brown then told § 87(2)(b) that if she did not open the door, the officers would break the door to gain access into the apartment.

§ 87(2)(b) stated that after this, she woke her son § 87(2)(b) and her daughter § 87(2)(b) and she instructed them both to go into her room and sit on her bed.

§ 87(2)(b) heard what she believed to be unsuccessful kicks against the door, in an attempt to break it open. Six to seven minutes later, Sergeant Brian Farrell broke the door open with a ram. Five to six officers then entered § 87(2)(b)'s apartment (Board Review 09).

Both § 87(2)(b) (Board Review 11) and § 87(2)(b) (Board Review 13) corroborated § 87(2)(b)'s statement.

Sgt. Brown stated that in the early morning of September 18, 2016, Sgt. Brown was preparing to conduct a warrant sweep in the geographical confines of what is East Harlem (Board Review 14). Upon searching for the active warrants in that area, Sgt. Brown identified arrest warrant number § 87(2)(b) (Board Review 01). The subject of the warrant was § 87(2)(b), whose address was listed as § 87(2)(b) in Manhattan, and who was found guilty of an “ABC violation.” Prior to executing the warrant, Sgt. Brown conducted searches of the OMNIX, Summons, and “TLO” databases to confirm § 87(2)(b)'s connection to the location; however, the searches yielded negative results. § 87(2)(b)'s only connection to the location found by Sgt. Brown was his address listed on the arrest warrant.

Sgt. Brown stated that he was not familiar with § 87(2)(b) in any manner prior to September 18, 2016.

Sgt. Brown was with Police Officer Kevin Harding and Police Officer Matthew Murphy when he arrived at § 87(2)(b) in Manhattan. After knocking on the door of

§ 87(2)(b) a male voice, identified by the investigation as § 87(2)(b) came to the door. At that time Sgt. Brown did not know to whom the voice belonged. Sgt. Brown informed § 87(2)(b) that they were NYPD officers, and he asked to speak to the lease holder of the apartment. Sgt. Brown did not have any discussion with § 87(2)(b) about § 87(2)(b) or ask § 87(2)(b) who he was; Sgt. Brown spoke to § 87(2)(b) for less than one minute.

Moments later, Sgt. Brown heard a female voice, identified by the investigation as § 87(2)(b) come to the door. § 87(2)(b) asked the officers what it was that they wanted, and Sgt. Brown informed her that they were NYPD officers and that they had an active arrest warrant for a § 87(2)(b). § 87(2)(b) stated that she did not believe him, so Sgt. Brown held up the arrest warrant in front of the peep hole. Sgt. Brown told § 87(2)(b) that the officers “needed” to “verify whether or not § 87(2)(b) lived” inside of the location and that the officers “had to look anywhere a person can hide.” § 87(2)(b) told Sgt. Brown that no individuals by that name resided at the location, but Sgt. Brown told her that they “could not take her word for it.” Sgt. Brown requested that she open the door multiple times, but § 87(2)(b) “adamantly” refused. Sgt. Brown then informed § 87(2)(b) that if she did not open the door, the officers would have to open the door themselves. § 87(2)(b) told the officers to do so because she was not going to open the door.

When prompted, Sgt. Brown stated that he did not directly ask § 87(2)(b) if § 87(2)(b) was inside of the apartment. During the CCRB interview, Sgt. Brown was asked if he knew who the male voice belonged to and he stated that he “assumed” that it belonged to the subject. He assumed as much because “the male voice was the first to answer the door, he proceeded away [from the door], and then the female voice [came] to the door afterwards.”

Sgt. Brown believed the subject of the warrant was inside of the apartment because he spoke to a male voice and § 87(2)(b) refused to open the door for the officers.

Sgt. Brown additionally stated that he and his team did not have any entry tools. Sgt. Brown called Sergeant Brian Farrell via cell phone and requested that Sgt. Farrell and his team respond with entry tools. Sgt. Brown told Sgt. Farrell that he was having trouble gaining entrance into the location, which he was attempting to enter because he believed that the subject of the warrant was inside. Sgt. Farrell arrived and he broke down the door with a ram.

Both Det. Martinez (Board Review 15) and Sgt. Farrell (Board Review 16) corroborated Sgt. Brown’s account.

The video footage obtained in relation to this incident does not capture the initial interaction between § 87(2)(b) and the officers prior to the officer’s entry into the apartment.

At the time of the incident, the arrest warrant issued in the name of § 87(2)(b) was a seven year old warrant issued in 2009 (Board Review 1).

People v. Paige, 77 A.D.3d 1193 (2010) Prior to officers entering a location on the authority of an active arrest warrant, they must 1) Give a notice of entry and purpose for entry and 2) have a reasonable belief that the subject of the arrest warrant is present within the residence (Board Review 20). If both factors are present, forcible entry into a location is permitted. The reasonable belief standard is less stringent than the probable cause standard; it is based on an assessment of the totality of circumstances.

People v. Smith, 806 N.Y.S.2d 447 (2005) The possession of limited information that is five years old does not satisfy the reasonable belief standard that an individual may still be connected to a location or that the individual may be in the location at any given time (Board Review 21).

People v. Cabral, 560 N.Y.S.2d 71 (1990) An arrest warrant bearing an address at which the suspect was known or documented to have resided no more recently than six and one half months prior to the warrant’s execution was no longer valid for the address (Board Review 22). Additionally, police cannot rely on information contained in an arrest warrant that contains address based on information given by defendant six months earlier.

§ 87(2)(g)

Allegation C – Abuse: Detective Christian Martinez drew his gun.

It is undisputed that Det. Martinez entered § 87(2)(b) in Manhattan. § 87(2)(b) stated that after the door of the apartment was broken open, she observed five to six officers enter. One of the officers, Det. Martinez had his gun drawn, positioned with the side of the gun flat against his chest (Board Review 09).

Det. Martinez did not recall if he had his gun drawn upon entering the location (Board Review 15).

Sgt. Brown, Sgt. Farrell, Det. Murphy, and Det. Gresko all stated that they did not see Det. Martinez or any other officer with their gun drawn upon entering the location at the time of the incident (Board Review 14) (Board Review 16) (Board Review 17) (Board Review 18).

The video footage obtained in relation to this incident did not depict the officers' walking into the apartment after the door was broken open.

§ 87(2)(g)

Allegation D – Abuse: Detective Christian Martinez interfered with § 87(2)(b)'s use of a recording device.

It is undisputed that before the Manhattan Warrant Squad officers entered § 87(2)(b), § 87(2)(b) stood directly in front of the entrance to the apartment near the beginning of the living room, which is approximately 15 feet away from the entrance to the apartment. It is undisputed that when Det. Christian Martinez entered, he immediately walked in the direction where § 87(2)(b) was positioned, he passed her at one point, and then he proceeded passed her into the living room behind where she was standing.

§ 87(2)(b) stated that after the officers informed her that they were going to break the door, she stood back and began preparing her iPad to record. As she was doing so, the door was broken open and the Manhattan Warrant Squad officers immediately entered. Det. Martinez walked up to § 87(2)(b) and he took the iPad out of her hands and he tossed it "lightly" onto a desk located feet away from where the individuals were standing (Board Review 09).

§ 87(2)(b) ultimately never recorded the incident.

The video footage, taken by § 87(2)(b) later, did not depict the officers' initial entry into the home. However, as the recording was active while the officers were in the home, § 87(2)(b) is heard requesting that she be given her iPad back twice (Board Review 19). Initially she is heard at 1:03 saying, "Where is my iPad sir?" The question went unanswered by any officer, but § 87(2)(b) responds at 1:10 by saying, "He snatched your iPad from you?" To which § 87(2)(b) immediately says, "Yeah."

At 2:23 § 87(2)(b) says once again, "And I need my iPad from you." Det. Martinez responds to that statement with, "Your iPad is right over there."

Det. Martinez stated that when he entered the location he entered straight into the apartment, into the living room. While walking in, Det. Martinez observed § 87(2)(b) standing directly in front of the door holding an electronic device up. Det. Martinez stated that he did not have any

discussion with § 87(2)(b) regarding the device she was holding, he did not take the device out of her hand, and he did not see any other officer do so.

During his CCRB interview, Det. Martinez was presented the video mentioned above. After being prompted, Det. Martinez stated that it was his voice that responded to § 87(2)(b) telling her where the iPad was. Before Det. Martinez could be asked why he responded to the question, Det. Martinez's DEA representative Robert Alonge interjected and he provided an answer for Det. Martinez. Rep. Alonge said, "So, you could see where her iPad [was]?" Det. Martinez then agreed with that answer and stated that he responded because he saw where the iPad was located at that time (Board Review 15).

Sgt. Brian Farrell stated that when he entered the apartment, he observed § 87(2)(b) standing in the living room, "in line" with the entrance to the apartment. § 87(2)(b) was video recording the interaction with her iPad. Sgt. Farrell did not see any officer interact with § 87(2)(b) as she was recording, but more specifically he stated that he did not see Det. Martinez take the iPad out of her hands (Board Review 16).

Det. Murphy stated that upon entering the apartment, he observed § 87(2)(b) standing in the "living[room] area" of the apartment "holding up an iPad, I guess recording." Det. Murphy did not see Det. Martinez or any other officer take the iPad out of § 87(2)(b)'s hands (Board Review 17).

Sgt. Brown and Detective Gresko did not see § 87(2)(b) standing in front of the apartment door with a recording device, and they did not see any officer take an iPad out of her hand at any point during the incident under investigation (Board Review 14)(Board Review 18).

§ 87(2)(g)

FINEST MESSAGE RE: Recording of Police Action by the Public (2014) Members of the public are legally allowed to video, audio, or photographically record police interactions, unless said individual is interfering with police operations (Board Review 23). Members of the service are not to interfere with a person's use of a recording device to record police interactions.

Patrol Guide Procedure 208-03 (see page 10 under "Observers at the scene of police incidents) The video recording of officers, in itself, does not constitute probable cause for arrest. However, the procedure states that it is not intended to limit the authority of police to establish police lines and crowd control (Board Review 27).

§ 87(2)(g)

Allegation E – Abuse: An officer interfered with § 87(2)(b)'s use of a recording device.

§ 87(2)(g)

§ 87(2)(g)

Allegation F– Abuse: Sergeant Damion Brown detained § 87(2)(b)

Allegation G– Abuse: Sergeant Damion Brown detained § 87(2)(b)

Allegation H– Abuse: Sergeant Damion Brown detained § 87(2)(b)

It is undisputed that the members of the Manhattan Warrant Squad entered § 87(2)(b) in Manhattan to look for an the subject of arrest warrant #§ 87(2)(b) who is a § 87(2)(b) black male. It is undisputed that that apartment is § 87(2)(b) and § 87(2)(b)'s home. Finally, it is undisputed that after the officers obtained § 87(2)(b)'s identification upon request, officers made multiple requests for § 87(2)(b)'s identification.

§ 87(2)(g)

§ 87(2)(g)

People v. Cantor, 36 N.Y.2d 106 (1975) To determine whether or not a seizure is reasonable, one must weigh the government's interest in the detection and apprehension of criminals against the encroachment involved with respect to individuals' right to privacy and personal security. This assessment must consider whether or not the action of the police officers was justified at its inception and if was reasonably related in scope to the circumstances that rendered its initiation permissible.

§ 87(2)(g)

Allegation I – Discourtesy: Detective Corey Gresko spoke discourteously to § 87(2)(b)
and § 87(2)(b)

It is undisputed that Det. Gresko made a statement to the occupants of the home, insinuating possible sexual conduct between § 87(2)(b) and § 87(2)(b)

§ 87(2)(b) stated that prior to the officers leaving the location; Det. Gresko made an obscene comment regarding him sitting on § 87(2)(b)'s bed with § 87(2)(b) (Board Review 13).

§ 87(2)(b) stated that just before the officers left the apartment, Det. Gresko made an obscene statement. She recalled that the statement by Det. Gresko involved the phrase “sleeping with a minor” (Board Review 11).

As mentioned in the Case Summary section, § 87(2)(b) stated when the officers informed her they would be entering she told § 87(2)(b) and § 87(2)(b) to go into her bedroom and sit on her bed for their safety. Near the end of the interaction, Det. Gresko looked at § 87(2)(b) and he said, “You’re in bed with a minor and that’s called incest” (Board Review 09).

In the video obtained by the investigation, at 1:40, Det. Gresko is depicted in the frame and he is heard saying, “He is an adult and she is claiming she is § 87(2)(b) and has no ID, so that means he was in bed with a minor” (Board Review 19).

During his CCRB interview, Det. Gresko stated that at one point during the incident he heard § 87(2)(b) say, “I’m § 87(2)(b) I don’t have ID and I go to school” in response to being asked for ID. Det. Gresko then asked § 87(2)(b) that if she was § 87(2)(b) why was she in bed with a man that was “clearly” in his § 87(2)(b).

Det. Gresko mentioned the fact that § 87(2)(b) and § 87(2)(b) were in the same bed because he “found it out of the ordinary” to come into a room and see two people “under bed sheets” when one of the individuals is a minor. He did not know that the two individuals were siblings until after he made the statement.

Patrol Guide Procedure 203-09 When in contact with the public, NYPD officers must be courteous and respectful (Board Review 25).

§ 87(2)(g)

Squad: 12

Investigator: _____
Signature Print Date

Squad Leader: _____
Signature Title/Print Date